Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE CORPORATION,	)	
	)	DOCKET FILE COPY ORIGINAL
Transferor,	)	
	)	
and	)	CC Docket No. 98-184
	)	
BELL ATLANTIC CORPORATION,	)	
	)	
Transferee,	)	
	)	
For Consent to Transfer of Control	)	

SUPPLEMENTAL FILING OF BELL ATLANTIC AND GTE

Mark J. Mathis
John Thorne
Michael E. Glover
Leslie A. Vial
Lawrence W. Katz
BELL ATLANTIC CORPORATION
1095 Avenue of the Americas
New York, New York 10036

Counsel for Bell Atlantic Corporation

William P. Barr
GTE CORPORATION
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

Steven G. Bradbury
John P. Frantz
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, D.C. 20005

Richard E. Wiley
R. Michael Senkowski
Suzanne Yelen
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006

Counsel for GTE Corporation

January 27, 2000

TABLE OF CONTENTS

ATTACHMENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE CORPORATION,	)	
	)	
Transferor,	)	
	)	CC Docket No. 98-184
and	)	
	)	
BELL ATLANTIC CORPORATION,	)	
	)	
Transferee,	)	
	)	
For Consent to Transfer Control	)	

SUPPLEMENTAL FILING OF BELL ATLANTIC AND GTE

Bell Atlantic and GTE hereby submit this comprehensive proposal for resolving all issues raised in connection with their proposed merger, and request that the Commission expeditiously grant their pending license transfer applications.

I. INTRODUCTION AND SUMMARY

As the applicants demonstrated in their prior filings, the merger of Bell Atlantic and GTE is strongly in the public interest. That is true today more than ever, and is reflected by the fact that the Department of Justice already has approved the merger, as have all but two of the state regulatory commissions whose approvals are required (and the remaining two are expected shortly). The merger of Bell Atlantic and GTE also is vastly different from other recent mergers. It is not a horizontal merger between actual competitors like MCI/WorldCom. And it is not a lateral merger of adjacent regional Bell companies, as was true of SBC/Ameritech or even Bell Atlantic/NYNEX. Rather, it is a unique combination of complementary assets nationwide that

includes a critically important vertical component. By creating a truly national competitor with the reach and mix of services necessary to take on AT&T/TCI/MediaOne, MCI WorldCom, and Sprint, the merger of Bell Atlantic and GTE will generate enormous public interest benefits for consumers of Internet, long distance, wireless, local and national bundled services -- benefits that either were not present at all, or were present only to a significantly lesser degree, in those prior mergers. And here, there is no material risk of competitive harm. In particular, unlike those prior mergers, where the Commission concluded that adjacent RBOCs with major metropolitan markets in common are among the most likely potential significant competitors to one another, the service areas of Bell Atlantic and GTE do not overlap, and neither is a likely (or even less than likely) potential significant competitor of the other.

Because the merger of Bell Atlantic and GTE will produce enormous benefits with no risk of countervailing harms, it readily satisfies the Commission's public interest standard with no conditions. Nonetheless, to facilitate prompt approval, the companies are proposing here a comprehensive package of commitments that will produce still greater benefits. These commitments are patterned closely after those that the Commission adopted in its review of the SBC/Ameritech merger, subject to modification in a handful of instances to reflect the material differences between that merger and the present one. Taken as a whole, these commitments will further promote the widespread deployment of advanced services, spur local competition, and help to ensure that consumers continue to receive high quality and low cost telecommunications services.

In addition, to guarantee that the merged company remains faithful to both the letter and spirit of section 271, the applicants propose to transfer the Internet backbone and related assets

of GTE Internetworking to a corporation that is owned and controlled by third-party public shareholders and will operate independently of Bell Atlantic/GTE. The merged company will receive only the ten percent equity interest expressly permitted by the 1996 Act, and an option to increase its ownership interest to a controlling level once it receives sufficient interLATA relief to operate the business. This solution not only complies with the law, but it will also increase further the company's already substantial incentive to demonstrate compliance with the competitive checklist and to complete the 271 authorization process as quickly as possible.

In sum, the comprehensive proposal outlined here removes any doubt that the merger of Bell Atlantic and GTE is in the public interest; it should be approved.

II. THE MERGER IS STRONGLY PRO-COMPETITIVE

The merger of Bell Atlantic and GTE will produce substantial pro-competitive and pro-consumer benefits in telecommunications markets across the country, with no countervailing risk of harm to competition in any market. Consequently, the merger is in the public interest, with or without conditions.

A. The Merger Will Produce Enormous Public Interest Benefits

The merger of Bell Atlantic and GTE is different in fundamental respects from other recent mergers that have been addressed by the Commission. It is not a merger of adjacent BOCs. On the contrary, it is a merger of broadly complementary assets dispersed nationwide. And rather than a purely lateral merger, it includes important and strongly pro-competitive vertical components, including the ultimate combination of GTE's competitively vital Internet backbone business and national long distance network with Bell Atlantic's established customer

relationships in the concentrated and business-rich metropolitan markets in the Northeast.[1] As a result of these fundamental differences, the merger of Bell Atlantic and GTE will produce enormous public interest benefits of a type that simply were not present in previous mergers.

1. Internet and data services. The merger of Bell Atlantic and GTE will promote competition in the critically important Internet backbone business and, by doing so, enhance the competitiveness of the Internet and advanced data services generally. *See* Public Interest Statement (attached as Exhibit A to Bell Atlantic and GTE's Oct. 2, 1998 Application for Transfer of Control) at 3, 15-18 (hereafter "Pub. Int. Stmt."); Joint Reply Comments of Bell Atlantic and GTE at 9-11 (Dec. 23, 1998) (hereafter "Jt. Rep."). This is a benefit that was wholly lacking in other recent mergers, and is more important today than it was even at the time this merger was announced.

As this Commission itself recognized in its review of the MCI/WorldCom merger, the Internet backbone market is highly concentrated, and is dominated by a handful of major providers. *See WorldCom-MCI Order*, CC Docket No. 97-211, 13 FCC Rcd 18025, ¶ 148 (1998). In the time since, the problem has grown worse as concentration has continued to increase and the Big Three long distance incumbents have come to dominate the Internet backbone business to an increasing degree. MCI WorldCom's share of peering traffic continues to grow, with Sprint and AT&T rounding out the top three backbone providers. Moreover, while

[1] As Chairman Kennard recently explained in the context of another combination between an RBOC and an "[u]pstart long distance company," this kind of vertical combination is a "very different combination" from a merger of adjacent RBOCs and presents a "[d]ifferent competitive dynamic"; "we'll put that one on the fast track." *Telephony*, COMMUNICATIONS DAILY, at 7 (Nov. 15, 1999).

the divested MCI backbone (now owned by Cable & Wireless) formerly was the third largest backbone provider, its traffic share has fallen precipitously.

As a result, the Big Three long distance incumbents are on the verge of transferring their oligopoly control of the long distance market onto the Internet. The increasing concentration of control in the hands of the long distance incumbents is of particular concern not just because the likely result is a decrease in competitiveness for the Internet itself, but also because the long distance incumbents are the least likely to permit the development of innovative new services that might compete directly with their traditional long distance business.

GTE Internetworking ("GTE-I"), which is the fourth largest Internet backbone provider and the only top-tier provider that is not controlled by a major long distance incumbent, stands as a critical competitive bulwark against the encroaching long distance oligopoly. As such, it plays a vital role in preserving the competitiveness of the Internet. But GTE-I is at a significant disadvantage compared to the other major backbone providers because it lacks the same mix of a strong national brand and national customer base that the long distance incumbents rely upon to build their marketing efforts.

Ultimately, the combination of GTE's Internetworking business with Bell Atlantic's concentrated and business-rich customer base will afford GTE-I access to precisely the kind of customer base it needs to be a more potent competitor of the Big Three backbone providers. As is discussed further below, the applicants' proposal here will preserve the merged company's ability to achieve the full measure of these benefits once it is able to acquire a controlling ownership interest in GTE-I. In the meantime, an important part of those benefits will be realized immediately, even during the period that GTE-I remains an independent company. Bell

Atlantic has already secured long distance relief in New York (representing approximately 30 percent of its region), and the combined company will remain free to offer long distance in all the states outside Bell Atlantic's Northeast region. As a result, GTE-I can immediately engage in beneficial joint marketing arrangements with the combined company, both outside the Bell Atlantic states and in the business-rich New York market (which is *a fortiori* permitted because Bell Atlantic can jointly market even with its own long distance affiliate in New York.). This benefit will steadily increase as Bell Atlantic receives long distance authority in each additional state.

2. Long distance. The merger will also produce a closely related benefit for consumers of long distance services. *See* Pub. Int. Stmt. at 3-4, 18-20; Jt. Rep. at 11-13. Moreover, now that Bell Atlantic has won long distance relief in New York, those benefits will be more immediate and tangible than they were even at the time the merger was announced.

Although the Commission discounted the possibility of any such benefit in the context of the SBC/Ameritech merger, it did so because neither applicant was yet authorized to offer long-distance service. *See SBC-Ameritech Order*, CC Docket No. 98-141, ¶ 303 (1999). Here, of course, Bell Atlantic does have long distance relief in its largest state, accounting for roughly one-third of the long distance business in the Bell Atlantic region. The combined company can also offer long distance in all the states outside the Bell Atlantic region, and GTE has been offering long distance nationwide since 1996. As a result, there will be an immediate long distance benefit here that was not present in that case.

Specifically, the transaction will allow the merged company to use long distance capacity on the facilities-based national long distance network that GTE is deploying (known as the

Global Network Infrastructure) to carry its combined traffic volumes, including traffic originating in New York. It will also allow the merged company to begin offering competitive packages of services to businesses with offices both in New York and in Los Angeles, Seattle, Dallas, Tampa, or other GTE areas. And again, it will allow for immediate local-long distance joint marketing arrangements in New York, including joint marketing with GTE-I. As a result, the merger will make the merged company's combined long distance business a more effective competitor and will speed the deployment of a fourth branded national facilities-based long distance network to compete with the Big Three. This is precisely the kind of pro-competitive development the Commission relied upon as a basis for approving the merger of MCI and WorldCom. *See WorldCom-MCI Order* ¶¶ 36, 42, 51 & n.119.

3. Wireless. The merger will also provide substantial benefits to consumers of wireless services. *See* Pub. Int. Stmt. at 4, 20-21. While this was true at the time the merger was announced, it is all the more true today as a result of the separate merger of Vodafone's and Bell Atlantic's domestic wireless properties. In sharp contrast to the SBC/Ameritech merger, where the Commission discounted the asserted wireless benefits as "speculative and small," *SBC-Ameritech Order* ¶ 5, the wireless benefits here are tangible, immediate and large.

Combining the complementary wireless properties of Bell Atlantic, GTE and Vodafone will create a third national wireless network that can compete effectively in a business where national coverage has proven to be a vital competitive asset. As the Commission itself has emphasized, the growth in demand for national-one-rate wireless service has been "[t]he most dramatic change in the mobile telephone industry" over the course of last year. *See Fourth CMRS Report*, 14 FCC Rcd 10145, 1999 FCC LEXIS 2979 at *19 (1999). Yet today, only two

providers, AT&T and Sprint, currently are positioned to provide this service over the long term,[2] because only those two companies have the kind of nationwide footprint necessary to avoid costly roaming charges.[3] AT&T and Sprint therefore currently enjoy a significant cost advantage over regional or other wireless providers that lack the same national reach.[4]

The combined wireless business of the merged company and Vodafone will provide the reach needed to compete effectively with AT&T and Sprint on a national basis. Altogether, the combined wireless business will have licenses capable of serving more than 90 percent of the U.S. population and 49 of the top 50 wireless markets. It will also have a wireless footprint capable of serving some 254 million POPs, which approaches the 264 million that can be reached by AT&T and the 268 million that can be reached by Sprint.[5]

---

[2] A third firm, Nextel, owns SMR licenses covering most of the country. But Nextel's ability to compete directly with AT&T and Sprint is compromised by the limited build-out of its network and the technical incompatibility between SMR technology on the one hand, and cellular or PCS on the other.

[3] According to the Department of Justice: "In contrast to other mobile wireless telephone service providers that offer services only on a local or regional basis on their own facilities, both AT&T and Sprint PCS have licenses and facilities in most large metropolitan areas and in many smaller metropolitan areas throughout the country. . . . Both AT&T and Sprint have attempted to exploit this advantage by, among other things, offering a single-rate national plan." *See United States v. AT&T Corp. & Tele-Communications, Inc.*, Proposed Judgment and Competitive Impact Statement, 64 Fed. Reg. 2506, 2511 (1999).

[4] As the Commission itself has explained, "it can be significantly more expensive for regional operators to provide customers with [national-one-rate service] than for national operators. One obvious way for an operator to reduce roaming costs is by acquiring licenses covering as much of the country as possible." *See Fourth CMRS Report*, 1999 FCC LEXIS 2979, at *29-30.

[5] *See* Paul Kagan & Associates, THE 1998 PCS ATLAS & DATABOOK 630 (Jan. 1998).

Moreover, combining the wireless businesses will produce significant cost savings and operating efficiencies. In addition to lowering cost by reducing dependence on costly roaming agreements, the combination will produce system-wide efficiencies associated with common network engineering, management, purchasing, and administrative functions, as well as allow faster and broader deployment of advanced new wireless services. Overall, the combination of the wireless businesses is expected to generate aggregate cost savings with a net present value of $1.9 billion, many of which will reduce incremental costs and therefore will contribute directly to the merged firm's ability to offer competitively priced services. *See* Declaration of Lawrence T. Babbio, Jr. at ¶¶ 2-6 (attached as Exhibit 1).

These savings are real and confirmed by actual experience. When Bell Atlantic and NYNEX merged their wireless businesses, the Commission recognized that "the efficiencies in management and uniform marketing, pricing and sales would be practically impossible without a merger." *See Bell Atlantic-NYNEX Mobile Order*, 10 FCC Rcd 13368, ¶ 46 (1995). And it was right. Within a year following the merger, the merged company had become the industry's low-cost provider by producing synergies in excess even of what had been projected.[6]

4. Local and bundled service offerings. The merger of Bell Atlantic and GTE also will promote competition in the local and bundled services markets in a way that simply was not

---

[6] *See, e.g.*, J.C. Smith, et al., Prudential Securities, Inc., INVESTEXT RPT. NO. 1659180, *Bell Atlantic - Company Report*, at *3 (Oct. 31, 1995) ("Greater than expected synergies were realized upon completion of the merger, particularly in customer acquisition costs, which declined 12% to $216 per customer."); Bell Atlantic News Release, *Bell Atlantic First Quarter Net Up 13.5 Percent* (Apr. 18, 1996) (citing a 21% reduction in cash expense per subscriber as evidence that the "synergies the joint venture and much larger footprint" created were "greater than expected").

possible with the combination of SBC and Ameritech. *See* Pub. Int. Stmt. at 1-3, 6-14; Jt. Rep. at 18-26.

Whatever the public interest merits of previous mergers, the combination of Bell Atlantic and GTE is fundamentally different. Unlike the SBC/Ameritech deal, the present merger does not involve the combination of adjacent regional Bell companies into a single super-regional monolith. On the contrary, GTE's local service facilities are islands in the other RBOCs' seas that provide a springboard for the merged company's expansion on a national basis into markets outside its traditional telephone service areas.

Indeed, the two companies already have invested enormous sums toward precisely that end, focusing their investments most heavily on the businesses and technologies of tomorrow. GTE already has an established and operational CLEC with approximately 60,000 local customers outside its local service territory, including in 17 of 21 markets the company has targeted for out-of-region expansion. *See* Joint Declaration of Geoffrey C. Gould & Edward D.Young, III ¶¶ 3-4 (attached as Exhibit 2). It also has invested hundreds of millions of dollars in the operations support systems and other assets (including customer acquisitions) needed to compete outside its traditional local service areas. *Id.* Bell Atlantic, in turn, recently announced an equity investment of more than $700 million in Metromedia Fiber Network, which plans to build fiber networks in 50 predominantly out-of-region cities and will provide dark fiber to both Bell Atlantic/GTE and other competing carriers.[7] *Id.* ¶¶ 8-10. GTE also has made enormous investments in Internet POPs and related assets outside its local service areas. These investments

[7] As a result, this latter investment provides a double benefit since it also will help to pay for the deployment of dark fiber that MFN will sell under existing deals to CLECs such as Winstar, Allegiance, Focal and Time Warner.

ultimately will provide the combined company with facilities, customers, and other product-lines that can be included in a bundled offering with -- and eventually will be a substitute for (as with VOIP) -- traditional telephone service. *Id.* These benefits are further reinforced by the combined company's multi-billion dollar investment in a national wireless business, which will also provide the combined company with facilities, customers, a recognized brand name, and a product that, to an ever increasing degree, will compete directly with landline telephone services. *Id.* ¶¶ 11-12. As a result, the combination of the two companies' massive investments will spur far more effective entry into the markets of other local exchange carriers.

Likewise, these combined investments also will promote competition in the national market for bundled services. Today, the telecommunications business no longer consists of a unitary product or service offering, and competitors are racing to assemble the capabilities to offer consumers a full bundle of telecommunications services nationwide. To date, the companies assembling the capabilities to roll out a national bundled service offering have been the Big Three long distance incumbents. As a result, combining the local, long distance, Internet, and wireless businesses of Bell Atlantic and GTE will create a critical fourth national provider with the reach and mix of services necessary to compete effectively in the emerging national market for bundled services.

B. The Merger Presents No Risk of Countervailing Harms

While the merger of Bell Atlantic and GTE will produce numerous benefits that were not present in the previous SBC/Ameritech merger, it presents none of the risks of harm that the Commission found there. Again, this fact is directly attributable to the fundamental differences between the two mergers.

1. The Merger Will Not Result In Lost LEC-LEC Competition

The Commission's principal concern in its review of the SBC/Ameritech merger, and its central premise for imposing conditions, was its finding that the merging parties would have competed in one another's local exchange markets if they did not merge. As it had in the previous merger of Bell Atlantic and NYNEX, the Commission specifically found that two adjacent RBOCs were among the most significant potential local competitors to one another in certain markets. In both instances, however, the Commission based its conclusion centrally on its determination that the companies had actual plans to compete, exploiting either the advantages of adjacency or the presence of existing relevant facilities (such as cellular properties), together with brand recognition, in one another's major metropolitan markets. *See SBC-Ameritech Order* ¶¶ 56, 66, 78-83, 85, 94-99 (focusing on St. Louis and Chicago); *Bell Atlantic-NYNEX Order*, 12 FCC Rcd 19985, ¶¶ 62, 69, 132 (focusing on New York City).[8] The present merger, however, contrasts sharply with those prior mergers in this key respect.

No plausible case has been made here that Bell Atlantic and GTE, without the merger, would be economically significant local-exchange competitors to one another -- much less "most significant market participants" -- or that they had plans to become significant competitors of one another. Bell Atlantic and GTE have, in fact, shown the contrary. Not only did the companies lack any actual entry plans in one another's local service areas, but simple factors of geography and economics make clear that they are not likely significant potential competitors. *See* Pub. Int.

---

[8] In contrast, while the Commission found that Ameritech planned to use its cellular properties in St. Louis to launch landline competition, the Commission found that GTE Consumer Services Inc., which was purchasing Ameritech's cellular properties in St. Louis, did not have "the adjacency, incentive and stated intention" to use such wireless facilities for landline competition. *See SBC-Ameritech Order* ¶ 97.

Stmt. at 25-33; Jt. Rep. at 30-35. On the contrary, the potential competition issue only arises in Pennsylvania and Virginia, and even there the two companies are not adjacent to one another in major metropolitan areas like St. Louis or New York City. *See SBC-Ameritech Order* ¶ 69 ("Any loss of potential competition by merger is . . . likely to affect primarily specific metropolitan areas."). Bell Atlantic's service area in those states is concentrated in the urban areas. GTE, in turn, is concentrated in rural and sparsely populated areas that are removed from the urban centers (and therefore present neither attractive entry targets nor a jumping-off point to major urban markets). In short, the critical Commission finding in *SBC-Ameritech* -- of lost significant local service competition attending the merger -- cannot be made here.

2. The Merger Will Not Result in a Loss of Relevant Benchmarks

The Commission's second concern in the SBC/Ameritech review was that the merger would reduce the number of relevant benchmarks available to regulators in assessing the comparative practices of comparable firms, and would therefore frustrate efforts by regulators to implement the market opening provisions of the 1996 Act. *See SBC-Ameritech Order* ¶¶ 57-59, 101. It rested that finding, however, on a conclusion that the merging parties were similarly situated and that, before merging, Ameritech frequently had taken approaches different from the other RBOCs. *Id.* ¶¶ 58-59. The present merger presents a significantly different case.

As the Commission expressly noted, "[c]omparative practices analyses are effective only when the firms under observation are similarly situated," that is, are "comparable firms -- *e.g.*, in their customer base, access to capital, network configuration, and the volume and type of demands from competitors." *Id.* ¶ 160. This finding is particularly relevant here because, while the Commission lumped GTE together with the RBOCs for purposes of its benchmark

discussion, the reality is that GTE's predominantly rural, dispersed territories, in which CLEC entry has been relatively slight, severely weaken any comparability needed for sound benchmarking. As Chairman Kennard has said: "GTE always has been treated differently [than the RBOCs] because it is smaller and less geographically focused."[9] Indeed, in Congress, the courts, and the Commission, GTE has for many purposes been treated as more different from than similar to the RBOCs, precisely because its service areas are more dispersed and more rural. *See BellSouth Corp. v. FCC*, 144 F.3d 58, 67 (4th Cir. 1998); *see also* Jt. Rep. at 39-40. Because of these factors, GTE is far more comparable to the smaller independent LECs that the Commission expressly concluded are not good benchmarks for the RBOCs. *See SBC-Ameritech Order* ¶¶ 168-169.

The current merger also is different in another important respect. Because Ameritech frequently had taken positions different from the other RBOCs, the Commission found that it was an especially important benchmark for section 271 purposes. *Id.* ¶¶ 148-149. But GTE is not subject to section 271, and in the intervening period, it is Bell Atlantic itself that has become the benchmark for section 271 purposes; it is the only company that has proven its compliance with section 271's competitive checklist and obtained long distance relief. In short, the Bell Atlantic/GTE merger will give rise no loss of meaningful benchmarks comparable to what the Commission found in the SBC-Ameritech proceeding.

---

[9] *See Kennard Says FCC Will Seek Sec. 271 Stay, Then "Use Every Tool,"* WASHINGTON TELECOM NEWSWIRE (Jan. 2, 1998).

3. The Merger Will Not Increase the Risk of Discrimination

The Commission's final concern in its SBC/Ameritech review was that the merger could increase the risk of discrimination because the combination of two large adjacent contiguous areas resulted in the merged company "controlling both ends of a higher percentage of calls." *Id.* ¶ 194. The Commission concluded that the merger increased SBC/Ameritech's "incentive to discriminate against the termination of calls in its region by independent IXCs in order to induce callers at the originating end to choose the incumbent LEC as the interexchange provider." *Id.* ¶ 196; *see also id.* ¶¶ 212-230. Whatever the merits of that theory (and the applicants take issue with its basic premise, *see* Jt. Rep. at 40-49), the present merger presents a very different picture than the SBC/Ameritech combination.

In sharp contrast to that case, the percentage of long distance calls that both originate and terminate in areas served by the merged company will actually be *lower* than that of Bell Atlantic alone. *Id.* at 46 n.112. Whatever problem concerned the Commission in its SBC/Ameritech review is therefore alleviated, rather than worsened, by the present merger. This again is true due to the atomized nature of GTE's local service territories. Precisely because GTE's local service areas are widely dispersed, a large percentage of the traffic that originates in GTE's territories terminates with local exchange carriers other than Bell Atlantic. And, from a practical perspective, the notion that the merged company could coordinate discriminatory activities in those widely dispersed locations without detection is implausible.

The current merger also differs from SBC/Ameritech with respect to the fundamental premise of the 1996 Act regarding long-distance service: a Congressional determination reflected in section 271 that certain LECs, until their "local markets are open," could "discriminate

against" rivals. *SBC-Ameritech Order* ¶ 16, 230; *see also id.* ¶¶ 14, 212-24, 229. In that transaction, the entire home regions of both parties were covered by section 271, and neither had proven that their markets were open to local competition pursuant to section 271.[10] In the present merger, by contrast, Congress left GTE's territories outside the section 271 bar altogether, reflecting a material difference in the underlying conditions for the vertical concern behind section 271 (as the courts, at the Government's urging, have found).[11] And the largest single market within Bell Atlantic's service territory -- New York -- has been found by the Commission to be open to competition as required by section 271.

Moreover, just as the Commission's vertical concerns vanish in the context of the present proceeding, so too does its concern that this merger could result in increased discrimination against CLECs. In its SBC/Ameritech review, the Commission was concerned that the incentive to discriminate against CLECs would increase because the merged firm could capture more of the benefits (than either firm would alone) of any discriminatory acts that raise CLEC costs of doing business even outside one of the merging company's service areas. *Id.* ¶¶ 186-193, 195-211. Even assuming the theory is true anywhere, it depends critically on two premises: (1) that the same CLECs will enter both of the merging companies' territories; and (2) that those CLECs will have costs that are common to the several areas at issue. Only where both premises hold

[10] *See SBC-Ameritech Order* ¶ 27 ("SBC and Ameritech have separately engaged in failed attempts to convince regulators that their local markets [were] open to competition within the meaning of section 271.") (footnote omitted).

[11] *Cf. BellSouth*, 144 F.3d at 67 ("Because the BOCs' facilities are generally less dispersed than GTE's, they can exercise bottleneck control over both ends of a telephone call in a higher fraction of cases than can GTE.").

true can discriminatory conduct that raises a CLEC's costs in one of the merging company's service areas automatically raise those costs in the other.

Here, however, the essential premises are missing. The theory does not apply when a CLEC in one merger partner's service area is not entering at all in the other's areas. Even where entry does occur, the theory steadily weakens as the locales at issue become more scattered and disparate, for the number and likelihood of any "common" CLEC costs (across territories) will be reduced. In this case, it is implausible that a discriminatory act toward a Northeast CLEC will have the theorized effect; the CLEC is unlikely to be entering most of GTE's rural areas at all. And, in any event, it is unlikely to be sharing many, if any, Northeast-region costs with any operations in Los Angeles, Seattle, Dallas, and Tampa. In sum, this aspect of the Commission's concern likewise is substantially lessened, if not altogether absent, in the context of the present merger.

III. THE PROPOSED CONDITIONS WILL PROVIDE STILL FURTHER BENEFITS

As the above discussion makes clear, the merger of Bell Atlantic and GTE satisfies the Commission's public interest standard without any need for conditions. Nonetheless, to create further consumer benefits, the parties are proposing here a comprehensive package of conditions, the detailed description of which accompanies this submission in a separately bound volume, that are patterned closely after those the Commission adopted in the *SBC-Ameritech Order*. We have simply adopted as is the overwhelming majority of those conditions. Of the 30 separate conditions adopted by the Commission, fully 22 either have been adopted in whole or have been

superseded by subsequent Commission orders and are therefore no longer required.[12] In a handful of instances that are addressed below, the commitments proposed here vary in certain respects to reflect the fundamental differences between that merger (and the merging parties) and this one. Taken as a whole, these commitments provide public interest benefits over and above those already created by the merger itself. Indeed, the proposed commitments expressly cover each of the five subject areas that were addressed by the conditions adopted in the SBC/Ameritech merger proceeding. *See SBC/Ameritech Order* ¶¶ 145-180.

First, Bell Atlantic and GTE are proposing a series of commitments that the Commission previously concluded will promote the deployment of advanced services. For example, we propose to create a separate affiliate for advanced services, which the Commission found "will provide a structural mechanism to ensure that competing providers of advanced services receive effective, nondiscriminatory access to the facilities and services . . . necessary to provide advanced services," "ensure a level playing field between [the merged company] and its advanced services competitors," and "greatly accelerate competition in the advanced services market . . . while prodding all carriers . . . to hasten deployment." *Id.* ¶ 363. We also propose to establish a "surrogate line sharing discount," which the Commission found will "spur deployment of advanced services . . . while ensuring that these other carriers receive treatment

---

[12] Specifically, four of the conditions imposed in the SBC/Ameritech proceeding have now been superseded by the Commission's *UNE Remand Order*, CC Docket No. 96-98 (1999). These include the requirement to provide certain specified information for loop qualification purposes, *id.* ¶¶ 426-431; the requirement to provide the so-called unbundled element "platform," *id.* ¶ 261 *et seq.* (defining conditions under which unbundled switching and therefore combinations that include switching must be provided); the requirement to provide certain specified unbundled elements pending the result of the remand proceeding (addressed by release of the *UNE Remand Order*); and the requirement to provide shared transport as an unbundled element in Ameritech states, *id.* ¶ 369.

. . . comparable to that provided to the [merged company's] separate affiliate." *Id.* ¶ 370. We will provide common electronic pre-ordering and ordering interfaces for facilities used to provide advanced services within their respective regions (and a discount on unbundled loops used to provide advanced services until they do), which the Commission concluded will "guard against discrimination" and lower "rivals' costs of providing competing services." *Id.* ¶ 371. And we will target deployment of their own advanced services to include low-income groups in rural and urban areas, "ensuring that the merged firm's rollout of advanced services reaches some of the least competitive market segments and is more widely available to low income consumers." *Id.* ¶ 376.

Second, Bell Atlantic and GTE are proposing a series of commitments that the Commission previously concluded would ensure that local markets are open, protect against discrimination and promote competitive entry. For example, we propose a comprehensive carrier-to-carrier performance plan (with both measurements and incentive payments) that will provide competitors "additional protections by strengthening [the merged company's] incentive to provide quality of service at least equivalent to the merged firm's retail operations or a benchmark standard." *Id.* ¶¶ 377, 422. We propose to provide uniform interfaces and related business rules that are based on national standards across our respective local service territories within fixed periods of time, to provide special OSS assistance to qualifying competitors at no additional cost, and to adopt the collocation-related conditions, all of which are measures that the Commission concluded "will reduce the cost of entry into the [merged company's] territories." *Id.* ¶ 422. And we propose to provide multi-state interconnection agreements, to provide for MFN treatment of agreements entered into by the merged company outside its

service territories or in other states inside its territory, which the Commission concluded "should assist competitors in entering new markets within the [merged company's] region." *Id.*

Third, the companies propose a minimum investment guarantee to foster out-of-territory competition. As is discussed further below, this commitment is tailored to the particular circumstances presented by this merger, and will ensure that the "merger will form the basis for a new, powerful, truly nationwide multi-purpose competitive telecommunications carrier." *Id.* ¶ 398.

Fourth, the companies propose a series of commitments to ensure that consumers continue to receive high quality and low cost telephone service. For example, we propose to offer enhanced Lifeline plans, provide additional reports on the quality of services provided to our customers, agree to continue participating in the Network Reliability and Interoperability Council, and either refrain from imposing or eliminate (when AT&T does) mandatory minimum charges for long distance services. *Id.* ¶¶ 400-405.

Fifth, the companies propose specific measures to ensure compliance with their commitments, including the establishment of a self-executing compliance program, an independent audit of the merged company's compliance, and self-executing remedies for failure to perform an obligation. *Id.* ¶¶ 406-414.

Moreover, to the extent a handful of the proposed conditions vary in certain respects from those adopted in the SBC/Ameritech proceeding, each of those variations is a direct result of, and eminently justified by, differences between that merger and this one.

A. Uniform Interfaces for Access to OSS. The parties are proposing here to establish uniform interfaces and related business rules that are based on national standards within

each of their respective regions, and to do so within timeframes that compare favorably with those established in the SBC/Ameritech conditions. The proposed condition, however, varies in two respects from the one imposed there.

1. The parties propose here to establish interfaces that are uniform within their respective service territories, but do not propose to extend that uniformity between their respective territories.[13] There are two reasons.

First, due to the dramatically different heritages of Bell Atlantic and GTE, the two companies' underlying support systems are so vastly different that developing and deploying common interfaces and business rules across the companies is both impracticable and prohibitively expensive. *See* Joint Declaration of Marion C. Jordan & Jerry Holland ¶¶ 8-30 (attached as Exhibit 3) (hereafter "Jordan & Holland Decl."). Because SBC and Ameritech (like Bell Atlantic and NYNEX) both were offspring of the old Bell System,[14] their legacy support systems, while still varying to some extent, were at least broadly similar. *Id.* ¶¶ 8-9. In many instances, they were developed by or in conjunction with Bellcore and, because many of the legacy systems pre-date divestiture, often were manufactured by Western Electric. *Id.* GTE, in contrast, grew out of an assemblage of independent telephone companies, never was part of the Bell System, and developed its own very different systems. *Id.* ¶¶ 10-12.

---

[13] Because neither Bell Atlantic nor GTE currently provides direct access to its service order processors, the commitment by SBC/Ameritech to extend SBC's pre-merger practice of providing such access following the completion of the merger is not relevant here.

[14] Even SNET was partially owned by AT&T and enjoyed the benefits of its association with the Bell System prior to divestiture.

Second, imposing such a requirement would do at least as much harm as good. In *SBC/Ameritech*, the uniform interface was designed to make up for a loss of local competition in the merging companies' adjacent regions, and served to provide uniformity in a large geographically contiguous region across the middle of the country. *See SBC-Ameritech Order* ¶¶ 371-372, 381-383. In contrast, the merger of Bell Atlantic and GTE results in no lost LEC-to-LEC competition and, just as critically, does not involve anything like the creation of a massive geographically contiguous territory. On the contrary, as has often been noted in specifically distinguishing GTE from the Bell companies, GTE serves a highly dispersed collection of areas across the country that are mostly distant from Bell Atlantic's service territory in the Northeast. As a result, there is no meaningful class of regional CLECs naturally addressing the combined Bell Atlantic/GTE areas.[15] And many of the CLECs that do compete with the respective companies already have designed their own systems to work with the differing interfaces that the respective companies already have deployed. *See* Jordan & Holland Decl. ¶¶ 22-30. Indeed, even national carriers like AT&T and MCI WorldCom have expressed grave concerns in state proceedings that Bell Atlantic and GTE might move to uniform systems and thereby undo the work that those carriers already have done to obtain access to each of the merging companies'

[15] In fact, the only states that Bell Atlantic and GTE both serve are Pennsylvania and Virginia. Even there, however, GTE serves largely rural and suburban franchises with only about 600,000 and 700,000 access lines respectively. Not surprisingly, therefore, competing carriers have chosen not to enter those GTE territories on any significant scale. Yet, providing uniform interfaces and business rules across the Bell Atlantic and GTE service territories in those states would require the expenditure of much of what it would cost to do so nationwide. *See* Jordan & Holland Decl. ¶ 27. That kind of massive expenditure simply cannot be justified for such a negligible gain.

separate and very different systems.[16] Accordingly, a requirement to establish uniformity between the Bell Atlantic and GTE service territories likely will do far more harm than good.

2. In the case of both Bell Atlantic and GTE, existing procedures are already in place for implementing changes or enhancements to the companies' interfaces that provide for participation by competing carriers. In Bell Atlantic's case, for example, OSS collaboratives have been conducted previously in both New York and New Jersey, and the results extended to other states insofar as they were relevant. *See* Jordan & Holland Decl. ¶¶ 32-42. Moreover, Bell Atlantic has participated in a collaborative process designed specifically to produce common interfaces and business rules across its entire region, and that provided for participation by all interested CLECs. *Id.* It also has in place a formal change management process to implement changes and enhancements to its interfaces, which was created under the auspices of the New York PSC. *Id.* Likewise, GTE has in place a formal change management process that was developed jointly with competing carriers under the auspices of the California commission to implement changes and enhancements to its interfaces. *Id.* ¶¶ 43-49. Changes made in California routinely are extended to GTE's entire service territory.[17]

---

[16] *See In re Joint Application of GTE Corp. and Bell Atlantic to Transfer Control of GTE's California Utility Subsidiaries*, Proposed Decision of ALJ, App. 98-12-005, at 128 (Calif. PUC Dec. 1999) ("AT&T, for example, contends that the proposed merger threatens to disrupt critical ongoing negotiations between AT&T and GTE, and separate critical negotiations between AT&T and Bell Atlantic, relating to OSS."); *id.*, at 130 ("AT&T and MCI say the applicants are grappling with how to integrate their vastly different systems, and that this threatens to undo much of the work AT&T and MCI have accomplished to obtain operational OSS from each applicant. Applicants, however, do not expect any operational consolidation from the merger.").

[17] In addition, Bell Atlantic and GTE will adopt the change management process currently in place in New York for use in all their states, subject to any necessary state approvals.

As a result, to the extent that issues relating to the implementation of this commitment already have been addressed in collaborative proceedings, Bell Atlantic and GTE do not propose to revisit them in new collaboratives. To the extent that issues previously have not been dealt with, however, the parties will institute a collaborative procedure as described further in the attached commitments. These procedures provide for participation by competing carriers and a mechanism for timely resolution of disputes.

B. Carrier-to-Carrier Performance Plan. Bell Atlantic and GTE propose to establish a comprehensive carrier-to-carrier performance plan that parallels the one adopted in the SBC/Ameritech proceeding. The performance plan itself simply replicates the one established there in all material substantive respects, and the remedies provided for under the plan proposed here are directly proportionate to the remedies adopted there. In that case, however, the actual measurements that feed into the plan were based upon measurements that were established for SBC in Texas. Here, the parties propose to substitute the measurements developed in California for use in the GTE states, and the measurements developed in New York for the Bell Atlantic states.[18] Doing so will merely ensure that the measurements are designed to match the systems and services of the specific companies involved in the merger here (rather than SBC's). It also will avoid creating yet another set of burdensome reporting requirements

[18] In a few instances, the California measurements were modified to conform more closely to definitions or disaggregation levels specified in the New York measurements. In Bell Atlantic's case, these measurements also would replace the less comprehensive set of measurements it currently reports as a result of its commitments in connection with the Bell Atlantic/NYNEX merger. *See Bell Atlantic-NYNEX Order*, Appendix C. In GTE's case, the performance plan terminates in 3 years when the proposed conditions sunset, rather than upon gaining section 271 relief (when the SBC/Ameritech plan terminates) because GTE is not subject to section 271.

that inevitably would generate confusion for all concerned to the extent they vary from those reported as a result of comprehensive state commission proceedings.

C. Expanded Most Favored Nation Treatment. Bell Atlantic and GTE also propose to grant expanded most favored nation treatment that tracks the conditions adopted in SBC/Ameritech. As was true there, an interconnecting carrier anywhere in Bell Atlantic/GTE's local service territory will be able to adopt terms that the merged company negotiates with another local exchange carrier anywhere outside the company's local service territory following the merger. Likewise, an interconnecting carrier anywhere in Bell Atlantic/GTE's local service territory will be able to adopt terms that the merged company negotiates with a competing carrier anywhere inside the merged company's local service territory following the merger. And, like there, an interconnecting carrier will be able to adopt terms that Bell Atlantic or GTE negotiated with a competing carrier in their respective service areas prior to the merger under certain conditions.

The condition proposed here, however, varies in one respect from the condition adopted in the SBC/Ameritech proceeding. There, competing carriers could adopt the terms of an agreement from another state that was negotiated prior to the merger only to the extent that the incumbent carrier that signed the agreement was an affiliate of the acquiring company (SBC) at the time the agreement was negotiated. The theory, quite properly, was that the acquiring company should not be bound by terms that were agreed to in other states at a time when it had no say over those terms. Here, in contrast, the merger is a true merger of equals and not an outright acquisition. As a result, applying the same principle here, neither of the merging parties should be bound by terms agreed to in other states prior to the merger and over which they had

no say. Accordingly, the proposed conditions here would allow an interconnecting carrier in a GTE state to adopt terms from agreements negotiated prior to the merger in any other GTE state, while an interconnecting carrier in a Bell Atlantic state could adopt terms from agreements negotiated prior to the merger in any other Bell Atlantic state.

D. Carrier-to-Carrier Promotional Discounts. In the SBC/Ameritech proceeding, the parties volunteered (and the Commission accepted) to provide promotional discounts on residential unbundled loops and resale services subject to a number of limitations. As the Commission made clear in its order, however, the purpose of those discounts was "[t]o offset the loss of probable competition between SBC and Ameritech for residential services in their regions" as a result of their merger. *See SBC/Ameritech Order* ¶ 390. Here, in contrast, neither Bell Atlantic nor GTE planned to compete with one another for residential services, nor, given the nature of their service territories, is it plausible to suggest that they would have absent the merger. Accordingly, there is no loss of residential competition to offset, and no reason to propose (or accept) such a condition here.

E. Out of Territory Competitive Entry. Likewise, in the SBC/Ameritech proceeding, the parties volunteered conditions establishing a specific timeline for the implementation of their so-called National-Local Strategy, along with incentive payments tied directly to meeting that timeline. They did so for the simple reason that, unlike here, their out-of-region entry plans were the single key basis for their argument that the merger would promote competition and was in the public interest. The Commission, however, concluded that the asserted benefits, at least in the context of that case, were not merger specific, and that the magnitude of the benefits was speculative and smaller than the applicants claimed. *Id.* ¶¶ 270,

303, 306, 313, 439. The Commission therefore attached less weight to the parties' plans or their proposed condition in evaluating the relative public interest benefits and harms from the merger than it did to other factors. *Id.*

In view of that history, the significant pro-competitive benefits for consumers of Internet, long distance, and wireless services that will result from this merger but were not present there, and Bell Atlantic/GTE's differing business plan, the parties here have not attempted to duplicate the out-of-territory commitment volunteered by SBC and Ameritech. There, the parties effectively committed to a minimum guarantee to ensure that they would continue their out-of-region effort, tying it to deployment of circuit switches that formed the basis of their business plan. Here, the parties can point to what they have already done in furtherance of their plan to assemble the assets needed to compete nationwide, rather than what they will do. GTE has an operational CLEC and has invested large sums in support systems and other assets needed to compete outside its territory. Since this merger was announced, Bell Atlantic and GTE have announced the addition of Vodafone's domestic wireless properties to create a national wireless competitor to rival AT&T and Sprint. Bell Atlantic has announced its investment in Metromedia Fiber Networks. And GTE has continued to invest in the growth of GTE-I's Internet backbone and data business.[19] For all these reasons, the particular commitment made by SBC and Ameritech is inapplicable here.

---

[19] This existing out-of-territory investment by Bell Atlantic and GTE already surpasses the amount of investment required by the SBC/Ameritech commitments, and the merged company will have a larger out-of-territory customer base than the parties agreed to there. Further, it is in the merged company's interest to continue to invest where and as it is economically justified as Bell Atlantic/GTE continues to assemble the geographic reach and service mix necessary to compete with national providers like AT&T, MCI and Sprint. Under similar circumstances in other recent mergers, such as the merger of AT&T and TCI, the

Given their broad mix of assets and the rapid rate of technological change, Bell Atlantic and GTE need the flexibility to pursue a range of technologies, markets, and marketing approaches as they prove to be efficient. The applicants therefore are not making the same commitment as SBC/Ameritech. Instead, the parties are proposing an out-of-territory commitment that is tailored to the particular circumstances of their merger. Specifically, within three years of the merger's close, the companies propose to spend a total of not less than $500 million to provide services outside their franchise areas that compete with the traditional telephone services provided by incumbent local exchange carriers, or to provide advanced services to mass market customers. At least half of these expenditures must be for facilities that are used to provide competitive local services, or to provide other services that are offered jointly with competitive local services, or for ventures that promote competitive local services, while other expenditures may be used to acquire customers for competitive local services. Given the rapid pace of technological change, however, the commitment is expressly made technology neutral in order to allow the parties to devote their resources to evolving technologies.[20] And to ensure that the parties follow through on their commitment, the proposal requires the parties to make payments to the U.S. Treasury equal to 150 percent of any shortfall.

Commission has declined to impose *any* conditions requiring the merging parties to undertake specific entry steps. *See TCI-AT&T Order*, CS Docket No. 98-178, 14 FCC Rcd 3160, ¶ 139 (1999) (relying on parties' plans to roll out competing local telephone service where economically justified).

[20] *See* Daniel Reingold, CS First Boston Equity Research (Jan. 25, 2000) (analyst report predicting that "out-of-region conditions (if any) . . . will focus on BEL's continuing to build out its data/internet and/or wireless businesses out of region. This would be more logical than the requirements imposed on SBC to serve 3 customers in each of 30 markets within 3 years using old-world technology (i.e., wireline circuit switches).").

F. InterLATA Services Pricing. In *SBC/Ameritech*, the merging parties (neither of which yet had authority to provide in-region long distance) committed not to institute mandatory minimum charges on interLATA calls. Bell Atlantic only recently entered the in-region long distance market in New York, did so without instituting mandatory minimums, and is willing to commit to not institute such minimums elsewhere. GTE, in contrast, has been in the long distance business since 1996 and has such charges in place today. Nevertheless, GTE is willing to terminate its mandatory minimums provided only that it is not disadvantaged in comparison to the major long distance incumbents by doing so. Accordingly, GTE will commit to eliminate mandatory minimum charges at such time as the market leader, AT&T, does the same.

IV. BELL ATLANTIC/GTE WILL FULLY COMPLY WITH SECTION 271

Bell Atlantic/GTE will ensure that the merged company is in full compliance with all the requirements of section 271. Before the merger closes, GTE will unilaterally exit certain businesses to the extent prohibited to Bell Atlantic, including resold voice long distance service within Bell Atlantic's non-271-approved states. With respect to the Internet backbone and related data businesses of GTE-I, GTE will eliminate the 271 issue by transferring GTE-I to a separate public corporation in which Bell Atlantic/GTE will own only a 10% interest with an option to increase its interest once it receives sufficient interLATA relief to operate the business. The remainder of this section addresses the structural solution for GTE-I and explains why this solution fully satisfies the legal requirements and policy objectives of section 271.